Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

In The

Supreme Court of the United States

October Term, 1977

No. 77-1301

GANNETT CO., INC.,

Petitioner,

v.

HON. DANIEL A. DEPASQUALE, County Court Judge of Seneca County, New York, *et al.*,

Respondents.

On Writ of Certiorari to the State of New York Court of Appeals

Petition for Certiorari Filed March 17, 1978
Certiorari Granted May 1, 1978

Daily Record Corporation
Rochester, New York

(3798)

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TABLE OF CONTENTS

	Page
Chronological List of Important Dates	1
Judgments, Orders and Opinions of the Courts Below	3
Exclusionary Order of Seneca County Court, Dated November 4, 1976	4
Letter from Gannett Reporter to Judge DePasquale Dated November 5, 1976	7
Letter from Judge DePasquale to Gannett Reporter Dated November 5, 1976	8
Transcript of Proceedings in Seneca County Court on November 9, 1976	9
Exclusionary Order of Seneca County Court, Dated November 17, 1976	11
Transcript of Proceedings in Seneca County Court, Dated November 16, 1976 Incorporated Into Exclusionary Order of November 17, 1976	13
Order to Show Cause and Petition Dated November 18, 1976 with Exhibits	19
Exhibit B to Petition	32

Chronological List of Important Dates

August 5, 1976	Respondents Greathouse and Jones arraigned on charges of Murder in the Second Degree, etc. before Seneca County Court Judge DePasquale.
November 4, 1976	Public and press ejected from Seneca County Court courtroom by oral order of Judge DePasquale. Pre-trial suppression hearing in case of *People of the State of New York v. Greathouse and Jones* commences.
November 5, 1976	Gannett reporter files written request for postponement of, and access to, suppression hearing. Judge DePasquale denies request, and hearing concludes.
November 8, 1976	Gannett moves, before Judge DePasquale, to vacate order of ejection and to gain access to transcript of suppression hearing.
November 9, 1976	District Attorney, Greathouse and Jones oppose Gannett motion on procedural grounds.
November 16, 1976	Argument on merits of Gannett motion permitted. Motion orally denied by Judge DePasquale.
November 17, 1976	Judge DePasquale signs written order denying Gannett motion.
November 18, 1976	Gannett, by order to show cause and petition, commences special proceeding in nature of prohibition and mandamus in the Supreme Court, Appellate Division, Fourth Department, challenging November 4 and 17, 1976 orders of Judge DePasquale.

December 17, 1976	Appellate Division issues judgment and opinion vacating orders of Judge DePasquale.
January 6, 1977	Notice of appeal to New York Court of Appeals filed.
December 19, 1977	New York Court of Appeals issues opinion and judgment modifying judgment below.
December 29, 1977	Gannett moves for reargument in New York Court of Appeals.
January 12, 1978	New York Court of Appeals denies motion for reargument.

Judgments, Orders and Opinions of the Courts Below

The oral Exclusionary Order of Seneca County Court (Judge DePasquale), dated November 4, 1976, is set forth at page 4 herein, and is unreported.

The Order to Show Cause, dated November 8, 1976, by which Gannett Co., Inc. sought to set aside the November 4, 1976 oral Exclusionary Order of Judge DePasquale, is set forth at page 42a of the Appendix to the Petition for a Writ of Certiorari, and is unreported.

The written exclusionary Order of Seneca County Court (Judge DePasquale), dated November 17, 1976, is set forth at page 11 herein, and is unreported.

The Opinion of the Supreme Court of the State of New York, Appellate Division — Fourth Department, entered December 17, 1976, is set forth at page 21a of the Appendix to the Petition for a Writ of Certiorari, and is reported at 55 AD2d 107, 389 N.Y.S.2d 719.

The Opinion and Judgment of the State of New York Court of Appeals, entered December 19, 1977, is set forth at page 2a of the Appendix to the Petition for a Writ of Certiorari, and is reported at 43 NY2d 370, 372 N.E.2d 544, 401 N.Y.S.2d 756.

The Order of the State of New York Court of Appeals denying reargument, entered January 12, 1978, is set forth at page 1a of the Appendix to the Petition for a Writ of Certiorari, and is reported at 43 NY2d 846.

Exclusionary Order of Seneca County Court,
Dated November 4, 1976

STATE OF NEW YORK COUNTY COURT:
COUNTY OF SENECA

—

THE PEOPLE OF THE STATE OF NEW YORK
—against—
DAVID RAY JONES AND AND KYLE EDWIN GREATHOUSE,

Defendants.

Indictment Nos. 76-18 and 76-19

—

MINUTES OF PROCEEDING held before HON. DANIEL A. DEPASQUALE, Seneca County Court Judge, on the 4th day of November 1976.

APPEARANCES:

WALTER J. WARD, ESQ., District Attorney
THOMAS L. JONES, ESQ., as Public Defender for Kyle Edwin Greathouse
STUART O. MILLER, ESQ., as Public Defender for David Ray Jones
DEFENDANTS, Present in person
FREDERICK MOREHOUSE, Deputy County Clerk
KAY L. ROCKWELL, Official Court Reporter

[2] MR. JONES: Before Mr. Ward proceeds, your Honor, I have two motions that I would like to direct to the procedural aspects of this proceeding. Since we are going to take evidentiary matters into consideration here that may or may not be brought forth subsequently at a trial, on behalf of the defendant Kyle Greathouse I would move that the public and the press be excluded from this hearing.

THE COURT: Mr. Miller?

MR. MILLER: Your Honor, on behalf of David Ray Jones, I make the same motion.

THE COURT: What is your second motion?

MR. JONES: The second motion, your Honor, is that other than the witness testifying at a particular time all witnesses be excluded until after they have completed their testimony.

THE COURT: All right. Now, you understand that the constitutional rights of the defendants — they are entitled to a public and speedy trial and the exclusion of the press and the public, this is being made at your request, and it [3] does abridge the rights, the constitutional rights, of the defendants?

MR. JONES: I fully understand that, your Honor, but this is not a trial, it is a hearing, and I think the dilatorious effects far outweigh the constitutional rights, and I would certainly renew that motion.

THE COURT: And you will renew for the same reasons, Mr. Miller?

MR. MILLER: My motion stands, your Honor. I have discussed this with my client, and that is my motion. I also move to exclude any and all witnesses who are not in fact testifying from the courtroom.

THE COURT: Mr. Jones, you discussed this with your defendant, Mr. Greathouse, is that correct?

MR. JONES: Yes, we have discussed procedural aspects.

THE COURT: All right. The Court is going to grant both your motions, but before I do, Mr. Ward, do you wish to be heard with respect to the motions? [4]

MR. WARD: No, your Honor. I stated earlier that I thought it was up to the defens[illegible] I would not oppose what they wished to do.

THE COURT: Therefore the Court is going to grant the motion, since these matters are in the nature of a Huntley

Exclusionary Order of Seneca County Court,
Dated November 4, 1976

hearing and suppression of physical evidence, and it is not the trial of the matter. Certain evidentiary matters may come up in the testimony of the People's witnesses that may be prejudicial to the defendant, and for those reasons the Court is going to grant both motions.

[Certification Omitted in Printing.]

Letter From Gannett Reporter to Judge DePasquale
Dated November 5, 1976

November 5, 1976

The Honorable Daniel DePasquale,
Seneca County Judge
Seneca County Courthouse
Williams Street
Waterloo, New York

Dear Judge DePasquale:

Our lawyers tell us that we have a right to cover this hearing and use our discretion as to what to publish, with all due consideration for a fair trial.

We ask that the hearing, if it is still underway, be postponed so that our attorneys can argue this point.

If the hearing has been completed, we ask to be given access to the transcript.

Thank you.

/s/ CAROL M. RITTER
Carol M. Ritter,
Seneca County Correspondent
Gannett Rochester Newspapers

Letter From Judge DePasquale to Gannett Reporter
Dated November 5, 1976

[Letterhead Omitted in Printing]

November 5, 1976

Ms. Carol M. Ritter
79 E. Bayard Street
Seneca Falls, New York 13148

RE: Peo. vs. Kyle Edwin Greathouse
Peo. vs. David Ray Jones

Dear Ms. Ritter:

This is to acknowledge your letter of November 5, 1976, which I received from my Court Attendant at approximately 2:58 P.M. today while I was on the bench presiding over the above-entitled matters.

Unfortunately, the Hearing concluded about 3:08 P.M. so there was no time for your Newspaper's attorneys to argue the point of the Press covering the proceedings.

Please be advised that following the close of the proofs, the Court reserved decision. Under no circumstances, therefore, will a transcript be made available to you before I have rendered my decision, at which time you may renew your request for a transcript through your attorney in the form of a Motion. Prior to my decision being rendered, your attorneys may possibly consider bringing on an Article 78 Proceeding in Supreme Court to compel the Court to provide said transcript.

Trusting the above will be of some assistance to you, I remain,

Very truly yours,

/s/ DANIEL A. DePASQUALE
DANIEL A. DePASQUALE
Seneca County Judge, Surrogate
and Family Court Judge

DAD:B
cc: Stuart Dunham

[Order to Show Cause, dated November 8, 1978, by which Gannett Co., Inc. sought to set aside the November 4, 1976 Exclusionary Order of Judge DePasquale,is set forth at page 42a of the Appendix to the Petition for a Writ of Certiorari.]

Transcript of Proceedings in Seneca County Court
on November 9, 1976

[Title Omitted in Printing]

Proceedings held before HON. DANIEL A. DePASQUALE, Seneca County Court Judge, on the 9th day of November 1976 in the Seneca County Courthouse at Waterloo, New York.

APPEARANCES:

WALTER J. WARD, ESQ., District Attorney

THOMAS L. JONES, ESQ., as Public Defender for defendant, Kyle Edwin Greathouse

STUART O. MILLER, ESQ., as Public Defender for defendant, David Ray Jones

ROBERT C. BERNIUS, ESQ., Attorney for Gannett Co., Inc.

KAY L. ROCKWELL, Official Court Reporter

[2] THE COURT: This problem is going to arise in the future, and that is the reason why it is a judicial issue, and not only in this proceeding but in future proceedings in this court and in other courts. There definitely is an adverse interest here, definitely you are adversely affected by it — you will have to demonstrate that fact, but your position is that you are adversely affected and that you have a right to be heard. This I tend to agree with, and I am going to hold this motion for a time, and I will make known to all of the parties and the attorneys here when, if any, arguments are going to be heard with respect to this motion.

What I am saying, in effect, is that I am reserving decision on your motion to dismiss, gentlemen. It is as simple as that.

MR. BERNIUS: Your Honor, could you give us an occasion when we might argue this on the merits? If you wish, I am

prepared to argue the merits of it right now rather than come back.

THE COURT: I think we all should be clear on what we are going to be doing in [3] in [*sic*] the future, and I am either going to allow the motion to be heard or I am not going to allow the motion to be heard in this court. It is as simple as that, one way or the other, so there is not really anything anyone has to do at this time, and it is going to be the Court's decision to make as to whether the motion is going to be heard in light of everything that is before the Court — the order to show cause, what has happened here this morning, and taking into consideration the motion for dismissal and your addressing yourself to this motion. With that, we will stand adjourned until another time.

MR. BERNIUS: Your Honor, is there a date for the adjournment?

THE COURT: No, I will give you notice as to when a decision is made.

MR. BERNIUS: Thank you.

[Certification omitted in Printing]

Exclusionary Order of Seneca County Court, Dated November 17, 1976

[Title Omitted in Printing]

ORDER

INDICTMENTS 76-18, 76-19

—

Upon the motion of Gannett Co., Inc., brought by Order to Show Cause and an affidavit in support thereof dated November 8, 1976, to vacate the previous order of this Court which precluded the public and reporters and representatives of Gannett Co., Inc. from attending the suppression hearing held herein pursuant to Article 710 of the Criminal Procedure Law; to admit said individuals to said hearing *nunc pro tunc* as of its commencement; and to grant to Gannett Co., Inc., its reporters and representatives access to the transcript of said hearing immediately upon the completion of said transcript; and after hearing argument on November 9, 1976 and November 16, 1976 by Nixon, Hargrave, Devans & Doyle, Robert C. Bernius, of counsel, on behalf of Gannett Co., Inc., in support of said motion; and by Thomas Jones, attorney for defendant Greathouse; Stuart Miller, attorney for defendant Jones; and the Seneca [2] County District Attorney, all three of whom appeared specially in opposition thereto; it is hereby:

1. Ordered, that the motion is in all respects denied; and it is further

2. Ordered, that the suppression hearing conducted by this Court on November 4-5, 1976 is to be closed to the public for the reasons appearing in the transcript of the oral decision of the Court annexed hereto; and it is further

Exclusionary Order of Seneca County Court, Dated November 17, 1976

3. Ordered, that the application of Gannett Co., Inc. for access to the transcript of said suppression hearing upon the completion of said transcript, is denied, ~~pending completion of the trial herein,~~ for the reasons specified in the transcript of the oral decision annexed hereto and made a part hereof.

Dated: November 17, 1976

ENTER:

/s/ Daniel A. DePasquale

HON. DANIEL A. DEPASQUALE
County Court Judge

/s/ Stuart O. Miller 11/17/76
/s/ Walter J. Ward 11/17/76
/s/ Thomas L. Jones 11/17/76
/s/ Robert C. Bernius 11/17/76

Transcript of Proceedings in Seneca County Court, Dated November 16, 1976, Incorporated Into Exclusionary Order of November 17, 1976

[Title Omitted in Printing]

Proceedings held before HON. DANIEL A. DEPASQUALE, Seneca County Court Judge, on the 16th day of November 1976 in the Seneca County Courthouse at Waterloo, New York.

APPEARANCES:

WALTER J. WARD, ESQ., District Attorney

THOMAS L. JONES, ESQ., as Public Defender for defendant, Kyle Edwin Greathouse

STUART O. MILLER, ESQ., as Public Defender for defendant, David Ray Jones

ROBERT C. BERNIUS, ESQ., Attorney for Gannett Co., Inc.

KAY L. ROCKWELL, Official Court Reporter

[2] THE COURT: The Court has listened to the arguments and it has filed the memorandum of law which you handed up to the Court, Mr. Bernius. It occurs to this Court that the hearing to which your paper chooses to intervene has already concluded, and the only thing that remains from the hearing is the decision of this Court, to which you concede, and very readily concede, that that is not to be made available. The decision is not to be made available to the press, to the public, but only to counsel.

It is very unfortunate that you were not here when the motion was made, but the motion was made and it was made with the moving force behind the motion being the rights of the defendants to a fair trial. It was alluded to by counsel that since this was a suppression hearing and certain evidentiary matters may have been testified to, and had they been reported by the press,

the defendants would not be able to get a fair trial. The Court in granting the motion — which motion was joined in by the District Attorney or it was without objection from the District Attorney — was granted by the Court on [3] the theory that under the special and unusual circumstances — one of these two defendants being 16 years of age — that there was a reasonable probability of of [*sic*] prejudice to the defendants, and the Court therefore found it necessary to grant the motion.

Now the issue is whether there should be a transcript afforded to the press prior to the decision being rendered. The Court is faced with that decision as to whether a transcript of the proceedings would be made available to the press at this point, or to the Gannett Company, because unfortunately the hearing had been concluded prior to your intervention, and the Court has afforded the Gannett Company a forum to be heard relative to its motion excluding the public and the press.

The Court has had a brief opportunity to study the memorandum of law which you submitted, Mr. Bernius, and point two is a point that the Court finds very much a point that may not be very easily decided, because, "There is inadequate factual basis for exclusion of the public and press." I have not had an opportunity to study the authorities that you cite. Should this burden be placed on the [4] defendants who choose to abridge their own constitutional rights for the sake of their concern and their rights to a fair trial? I do not believe that there are any authorities that make it incumbent upon the defendant, or defendants in this case, to present a factual basis for the exclusion of the public and press.

This is going back to what I stated in the very beginning, that it seemed to this Court that there was a reasonable probability of prejudice to these defendants. Nothing that you said in your

oral arguments — I have not examined each and every case which you cited — but there is nothing that you said here, I do not believe, that would change that. This Court still believes that there was a reasonable probability of prejudice to these defendants had the press and the public not been excluded. The Court has afforded the Gannett papers an opportunity to intervene and come in and be heard with respect to the motion which the Court granted. Rather than make a hasty decision — and the Court is inclined — perhaps from remarks that have already been made by the Court, that it has carefully [5] reconsidered the motion which was made on behalf of the defendants, and there is no real moving force for this Court to change its ruling on the motion, taking into consideration, of course, all of the facts and circumstances and everything that has been before this Court including what has happened here this morning. Actually, the urging by the Gannett newspapers for this Court to reverse its decision, there is no real basis for it.

In light of the facts and circumstances of this case, let me say this, that this Court has very sparingly invoked the rule of excluding the public and the press from any hearings and any trials happening in this particular court. There is nothing that has been presented, really, with any basis for changing, or the fact that when the particular motion was made that the Court granted the motion based on the reasonable probability of prejudice to the defendant. However, the Court will study the memorandum of law and may be arriving at a different conclusion after examining the authorities. I want to give you every benefit of the doubt here, so I will take the time to go over [6] your brief and the authorities that you have cited and go over the authorities that the attorneys for the defense and the District Attorney cited.

If you would like to address yourself to what I have stated, you may, Mr. Bernius, because I do want to make a decision here that is in all fairness. I want to very carefully balance the rights of the public to know and the defendants' rights to a fair trial, and this is actually what this Court is very concerned about.

MR. BERNIUS: Your Honor, the press and the public have the constitutional right to attend this proceeding. There must be a showing, a factual showing, sufficient to overcome that right, which means that the presence of the public and the press, which in some specific manner establish a compelling necessity having a direct adverse impact upon the proceeding of a substantial magnitude [*sic*]. Secondly, there must be a factual showing that there are no alternative means of remedying that problem, and the only thing that has been mentioned today, both by counsel and with all due respect by the Court, is that there is a [7] reasonable probability that the defendants' case would be prejudiced. With all due respect, your Honor, no one has said why the defendants' would be prejudiced by the press. In fact, Mr. Jones has suggested that there is an alternative remedy, which would be a change of venue.

We are laboring in the dark, your Honor, and I would ask your Honor to put on the record why there are no alternative remedies and how the defendants would be prejudiced in order that we could make a determination whether or not we would feel that that would be a sufficient reason for excluding us. In the case of an undercover officer whose life was threatened, fine, but we have nothing at this point, your Honor. There is no order.

THE COURT: There was no trial on the date of the hearing of the matter. It was a suppression hearing, and the hearing had been concluded when you or your newspaper chose to intervene

— or just short of its conclusion by a matter of minutes — and now the Gannett papers come in after the hearing is concluded to request a transcript of the proceedings. As counsel stated, [8] after the conclusion of the hearing the only thing left that remains is the decision to be made with respect to the admissibility of the evidence, to which you conceded that there is no right to. So to come in after the conclusion of the hearing to request the defendants to show some factual basis, you cannot put that burden upon a defendant. A motion has to be ruled upon when it is made — then and there at the time that it is made.

The Gannett newspapers knew that the matter was scheduled for a hearing, they did have an opportunity to have counsel present on that particular morning that the motion was made, and unfortunately there was no representative of the Gannett newspapers. There may have been a reporter present in your newspaper who was excluded, but following the conclusion of the hearing — then to say, "Well, let's put the burden on these defendants to show on a factual basis where they are going to be prejudiced," is being unreasonable. You have to go back to when the motion was made, and at the time the motion was made, it was made on behalf of the defendants who were facing very serious charges, [9] and as counsel stated, it was a sensitive hearing. With the age of the defendants and everything being taken into consideration and the fact that the People were joining in, or not objecting to the motion, the Court at that time ruled on the motion, and the basis for its ruling being that there was a reasonable probability of prejudice to the defendants.

The Court is well aware of the constitutional rights of the press and of the public and of the defendants, and it has tried to afford you every opportunity to reconsider its decision in light of the authorities. I think we are faced with a very unique situation

Transcript of Proceedings, Dated November 16, 1976
Incorporated Into Exclusionary Order of November 17, 1976

here, and a very special set of circumstances that we are faced with. For that reason, there is not anything that you have presented to this Court for it to reverse its decision that was previously made. Again, this brief could have been presented to the Court at some time, perhaps earlier, for its consideration. The Court has had an opportunity to very cursorily examine the memorandum of law, but has noted the authorities cited and the Court has read these cases and is very familiar with them. Very frankly, the Court does not find any [10] reason to reverse its decision that was made at the time the hearing commenced.

MR. BERNIUS: Your Honor, do I take it that you are also denying our application for a transcript?

THE COURT: As I stated in a letter, I think the transcript is all in together with the denial of the motion and the Court not reversing its decision. That is the decision of this Court.

MR. BERNIUS: May I submit an order or should I order a copy of this transcript to serve as the basis for an order in the case concerning our application?

THE COURT: You may submit an order and along with that the record of these proceedings, if you would like.

MR. BERNIUS: Again, there is a delay, and, your Honor, each day that passes is in our estimation an injury to the press. It is now 12:15, and if it is all right with your Honor, perhaps early this afternoon I could submit an order for your signature in lieu of having to wait for a [11] transcript of these proceedings.

THE COURT: I think that should be part of the order. The oral decision from the bench should be part of the order.

[Certification Omitted in Printing]

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FOURTH DEPARTMENT

In the Matter of
The Application of
GANNETT CO., INC.,

Petitioner,

• • •

–against –

HON. DANIEL A. DE PASQUALE, as Judge of the Seneca County Court,
KYLE EDWIN GREATHOUSE, DAVID RAY JONES, and
WALTER J. WARD, as District Attorney of Seneca County,

Respondents.

ORDER TO SHOW CAUSE AND STAY

Upon the annexed Petition herein, it is hereby:

ORDERED that Respondents Hon. Daniel A. DePasquale, as Seneca County Court Judge; Walter J. Ward, as District Attorney of Seneca County; Kyle Edwin Greathouse and David Jones show cause at a Term of this Court to be held at the Hall of Justice, Rochester, New York on the 6th day of December, 1976, at 10 A.M. or as soon thereafter as counsel can be heard, why a judgment should not be made and entered herein, pursuant to CPLR Article 78, vacating and prohibiting enforcement of the oral Order, dated November 4, 1976, of Hon. Daniel A. DePasquale which excluded the public and press from attendance at the pre-trial suppression hearing in the matter of *People v. Kyle Edwin Greathouse and David Ray Jones*, and

further vacating and prohibiting enforcement of the Order, dated November 17, 1976, of Hon. Daniel A. DePasquale in the matter of *People v. Kyle Edwin Greathouse and David Ray Jones*, which Order denies Petitioner's motion to be admitted, *nunc pro tunc* as of its commencement, to the suppression hearing conducted in Seneca County Court on November 4-5, 1976; denies Petitioner's motion for access to the stenographic transcript of said hearing; and denies Petitioner's motion to vacate the aforementioned oral Order of said court dated November 4, 1976; and it is further

ORDERED that Respondents shall serve and file their verified answers and other written proof on or before November 24th, 1976; that all memoranda of law in behalf of any party shall be served and filed with the Court on or before November 29th, 1976, and that all reply memoranda be served and filed with the Court on or before December 3rd, 1976; and it is further • • •

ORDERED that service by mail of this Order to Show Cause, together with the papers submitted in support thereof, upon the office of Respondent Hon. Daniel A. DePasquale; upon the office of Stuart O. Miller, Esq., attorney for Respondent David Jones, upon the office of Thomas L. Jones, Esq., attorney for Respondent Greathouse; and upon the office of Respondent Ward on or before the 22nd day of Novemb r, 1976 shall be deemed good and sufficient service.

Dated: November 18, 1976

/s/ Harry D. Goldman
Justice, Appellate Division,
Fourth Department

[Title Omitted in Printing]

PETITION

The Petition of Gannett Co., Inc. (hereinafter "Petitioner") seeks relief in the nature of a writ of prohibition and mandamus, pursuant to CPLR Article 78, vacating and prohibiting enforcement of the oral Order, dated November 4, 1976, of Hon. Daniel A. DePasquale which excluded the public and press from attendance at the pre-trial suppression hearing in the matter of *People v. Kyle Edwin Greathouse and David Ray Jones*, and further vacating and prohibiting enforcement of the Order, dated November 17, [2] 1976, of Hon. Daniel A. DePasquale in the matter of *People v. Kyle Edwin Greathouse and David Ray Jones*, which Order denies Petitioner's motion to be admitted, *nunc pro tunc* as of its commencement, to the suppression hearing conducted in Seneca County Court on November 4-5, 1976; denies Petitioner's motion for access to the stenographic transcript of said hearing; and denies Petitioner's motion to vacate the aforementioned oral Order of said court dated November 4, 1976; [hereinafter "Orders"]. The Petition respectfully alleges upon information and belief:

Parties

1. Petitioner is a public corporation, duly incorporated and existing under the laws of the State of Delaware, with its principal offices located at 55 Exchange Street, Rochester, New York.

2. Petitioner owns and operates, *inter alia*, the following newspapers and television stations:

a. *The Democrat and Chronicle*, a morning daily newspaper of general circulation in the greater Rochester area (including Seneca County), published in Rochester, New York.

b. *The Times Union*, an afternoon daily newspaper of general circulation in the greater Rochester area (including Seneca County) published in Rochester, New York.

[3] c. Channel 10-T.V., a VHF television station broadcasting in Rochester, New York.

3. Respondent Hon. Daniel A. DePasquale (hereinafter "Judge DePasquale") is a County Court Judge for the County of Seneca and is in that capacity presiding in the criminal proceedings being held in County Court, Seneca County, in the case of *People v. Kyle Edwin Greathouse and David Ray Jones*, Seneca County Indictments 76-18, 76-19, which involve charges of Murder in the Second Degree, Robbery in the First Degree, and Grand Larceny in the Second and Third Degrees (hereinafter "the Criminal Case"). Judge DePasquale presided in said Court during a pre-trial suppression hearing held in the Criminal Case on November 4-5, 1976.

4. Respondents Kyle Edwin Greathouse and David Ray Jones (hereinafter "defendants") are the defendants in the Criminal Case. Defendants, by their attorneys, filed a motion, pursuant to CPL Article 710, to suppress certain statements attributable to them in the Criminal Case, and on November 4, 1976, requested that the suppression hearing in the Criminal Case be conducted with the public and press excluded.

5. Respondent Walter J. Ward is District Attorney of Seneca County and in that capacity represents the People of the State of New York in the Criminal Case. Respondent Ward originally acquiesced in, and now supports, the position of defendants with respect to closure of the courtroom.

Background

[4] 6. On or about August 2, 1976, defendants were accused by a Seneca County Grand Jury of Murder in the Second Degree, Robbery in the First Degree, Grand Larceny in the Second Degree, and Grand Larceny in the Third Degree (Seneca County Indictments 76-18, 76-19).

7. The charges and the events preceding them were the subject of great public interest. Accordingly, Petitioner assigned a number of reporters to cover both the investigation of the alleged crime and the legal proceedings in the Criminal Case subsequent to the arrest of defendants.

8. Petitioner and its reporters expended great amounts of time, effort and other resources in observing and reporting the investigation of the crimes alleged, as well as the pre-trial proceedings attendant to the Criminal Case. Samples of the articles written on the subject by representatives of Petitioner (who observed the criminal investigation and the pre-trial proceedings in the Criminal Case), and published by Petitioner, are attached to this Petition as Exhibits "B-1" through "B-16." In addition, the criminal investigation and the Criminal Case were the subject of numerous articles and reports by news media other than those of Petitioner, a sample of which is attached to this Petition as Exhibit "B-17."

[5] 9. The crimes allegedly committed by defendants involve the purported murder and robbery of a former Brighton, New York policeman, Wayne Clapp, who, according to police, was taken by the defendants onto Seneca Lake and there killed by them. The matter generated intensive public interest for several reasons including the failure of authorities to recover the body of Officer Clapp. (Exh. B-1, B-2).

10. The police initially experienced difficulty in apprehending the individuals suspected of the crime, and, through Petitioner's reporters and news articles, appealed to the public at large for assistance in solving it. (Exh. B-2).

11. Defendants were, on July 21, 1976, arrested in Michigan for the commission of the alleged crime. The extradition of Defendant Greathouse, according to State Police authorities, involved unique legal problems (Exh. B-5, B-7).

12. Following the return of defendants to New York and their indictment by the Seneca County Grand Jury, Respondent Ward indicated that the Criminal Case was unique in the annals of New York jurisprudence in that the *corpus* of the alleged crime has never been recovered: Officer Clapp's body is still missing. (Exh. B-10).

13. At the arraignment of defendants on August 5, 1976, their attorneys requested an additional 45-days beyond the statutory period in which to make pre-trial motions, citing the "complexity of the case" and "novel circumstances" present therein. [6] (Exh. B-13, B-14). Thereafter, defendants made pre-trial motions to suppress evidence, pursuant to CPL Article 710.

14. Upon information and belief, any statements made by defendants to law enforcement officials or their agents, and any physical evidence seized from defendants, all of which would necessarily have been the subjects of the suppression hearing herein, assume especial importance in the Criminal Case because of the absence of a *corpus*, and the judicial determination of their admissibility may be determinative of the Criminal Case.

15. Defendants' pre-trial motions to suppress evidence raise issues of serious and legitimate public concern, including, necessarily, allegations of improprieties and overreaching on the part of law enforcement officials in a serious criminal case which has legal aspects and factual circumstances of intense public interest. Accordingly, Petitioner assigned a reporter to attend and to report on the evidentiary hearing.

The Orders

16. On November 4, 1976, at the time appointed for the commencement of the hearing on defendants' motions to suppress evidence, Petitioner appeared through its news reporter, Carol Ritter.

[7] 17. Prior to the commencement of the hearing on defendants' pre-trial motions on November 4, defendants made an oral motion to exclude the public and the press therefrom, which Judge DePasquale immediately orally granted. The entire colloquy surrounding defendants' motion is as follows:

[Text omitted in printing and reproduced at pages 4-6 of this Appendix.]

[8] 18. Pursuant to Judge DePasquale's instructions, representatives of the press, including Ms. Ritter, and the public were removed from the courtroom.

19. Upon information and belief, the suppression hearing thereupon commenced and testimony was taken therein. During the pendency of the hearing, Ms. Ritter was able to secure the advice of legal counsel, and on Friday, November 5, 1976, sub-[9] mitted a written request to Judge DePasquale to postpone the hearing to permit attorneys from Petitioner to argue on her behalf, and to be given access to transcripts of any testimony already completed (Exhibit "D").

20. Judge DePasquale orally and by letter (Exhibit "E") denied her request, and the hearing continued to its conclusion closed to the public and to the press.

21. On Monday morning, November 8, 1976, an attorney for Gannett Co., Inc. appeared before Judge DePasquale and asked to be permitted to be heard on behalf of the Gannett Co., Inc. concerning the exclusion of the public from the hearing. Judge DePasquale thereafter signed an Order to Show Cause (Exhibit "F"), returnable on November 9, 1976, which directed the defendants and Respondent Ward to show cause why Gannett Co., Inc. employees and reporters should not be allowed immediate access to transcripts of the suppression hearing immediately upon their completion, and why the prior oral order of Judge DePasquale barring the press and public from the hearing should not be vacated *nunc pro tunc* as of November 3, 1976.

22. On November 9, 1976, the attorneys for the defendants and Respondent Ward appeared "specially" and opposed, on procedural grounds, the remedies sought by Petitioner in its Order to Show Cause. Although permitted to respond to the procedural issues raised, Petitioner was not permitted either to [10] argue orally or submit papers concerning the merits of its position. Judge DePasquale reserved decision on the question of whether he would permit argument on the merits, and adjourned the matter indefinitely. (Exhibit "G").

23. On November 12, 1976, Judge DePasquale informed the parties by telephone that he would permit arguments on the merits to be made on November 16, 1976.

24. On November 16, 1976, oral argument on the merits of Petitioner's claims took place in Seneca County Court. Petitioner's argument was rejected by Judge DePasquale from

the bench, and Petitioner was instructed by Judge DePasquale to include a transcript of that oral decision in any submitted order. (Exh. "H"). Said transcript was immediately ordered by Petitioner, but was not obtained until November 17, 1976.

25. On November 17, 1976, Judge DePasquale, after obtaining the approval of all counsel as to its form, signed the written Order which Petitioner seeks to vacate and prohibit enforcement of herein (Exhibit "A").

Basis for Relief

26. Petitioner commences this proceeding, which is in the nature of a writ of prohibition and mandamus, pursuant to Article 78 of the Civil Practice Law and Rules. The proceeding is commenced in this Court pursuant to CPLR § 506 (b) (1).

[11] 27. Petitioner seeks to prohibit enforcement of and vacate the Orders of Judge DePasquale dated November 4, 1976 and November 17, 1976. Petitioner cannot review said Orders by appeal to a court or to any other body or officer, and has exhausted its remedies before Judge DePasquale.

28. Petitioner, on behalf of itself and as representative of the public at large, respectfully submits that the Orders of Judge DePasquale were in excess of his jurisdiction, were made in violation of lawful procedure, were affected by an error of law, were an abuse of discretion, and were arbitrary and capricious in that:

a. the Orders are directly contrary to the provision of Section 4 of the Judiciary Law which provides, with certain exceptions here inapplicable, that the "sittings of every court within this state shall be public, and every citizen may freely attend the same," and

b the Orders violate the guarantee to Petitioner, and to the public at large, of a public trial secured by the Sixth and Fourteenth Amendments to the United States Constitution, and are, moreover, an abridgement of the freedom of the press in violation of the First and Fourteenth Amendments to the United States Constitution, and

c. the Orders further violate Article 1, Sections 6 and 8 of the Constitution of the State of New York, and [12] Civil Rights Law § 12, which afford guarantees similar to those aforementioned, and

d. the proceedings which culminated in the issuance of the Orders denied to Petitioner due process of law.

29. The Orders apply specifically and directly to Petitioner and its representatives, and unless vacated will immediately and irreparably abrogate the rights guaranteed to Petitioner and to the public at large as set forth above.

30. Upon information and belief, the abrogation of these constitutional and statutory rights of Petitioner is authorized, if at all, only after notice and an opportunity to be heard, after a clear and unequivocal evidentiary showing that the limitation of such rights is necessary to ensure a defendant a fair trial or that there exists a demonstrable clear and present danger to a witness, and after a finding that there is no alternative remedy available to the Court.

31. Petitioner was not given notice or an opportunity to be heard prior to the infringement of its rights.

32. No evidentiary showing was made to Judge DePasquale sufficient to abrogate the constitutional and statutory rights of Petitioner and the public in general.

33. Judge DePasquale made no finding of fact which would justify the abrogation of the aforementioned rights of Petitioner and the public.

[13] 34. Upon information and belief, there are no facts which support the Orders of Judge DePasquale.

35. Accordingly, Petitioner believes that insofar as they close the hearing on the suppression motion to the public and the press, including the Petitioner, the Orders are arbitrary and capricious, constitute an abuse of discretion, are beyond the legal authority of the Court, are based upon an error of law and abrogate Petitioner's constitutionally protected rights to freedom of speech, freedom of the press, a public trial, and due process of law.

36. Petitioner will suffer irreparable harm if the Orders are not vacated immediately.

37. Petitioner has no adequate remedy other than this proceeding, and no previous application for the within requested relief has been made.

WHEREFORE, Petitioner respectfully requests this Court to:

1. Stay enforcement of the Order of November 17 insofar as it prevents the public, the press and Petitioner from access to the transcript of the suppression hearing held in the Criminal Case pending a determination on the merits of this proceeding, and

2. Grant judgment: prohibiting enforcement of, and vacating, the Orders of November 4 and November 17, 1976; directing [14] Respondents to admit Petitioner and the public to the suppression hearing held November 4-5, 1976 in the Criminal Case, *nunc pro tunc* as of its commencement; and directing that Petitioner be provided with a copy of the transcript of said suppression hearing, and

3. Grant such other and further relief as the Court may deem appropriate.

Dated: November 18, 1976

NIXON, HARGRAVE, DEVANS
& DOYLE
Attorney for Petitioner
Office and Post Office Address
Lincoln First Tower
Rochester, New York 14603
(716) 546-8000

ATTORNEY'S VERIFICATION

State of New York
County of Monroe SS:
City of Rochester

ROBERT C. BERNIUS, being duly sworn, deposes and says:

1. That he is an attorney at law associated with Nixon, Hargrave, Devans & Doyle, attorneys for the Petitioner in the within action; that the allegations of paragraphs 21 through 28 of the foregoing Petition are true of his own knowledge; and that the reason this verification of paragraphs 21 through 28 of the Petition is made by deponent and not by the Petitioner is that all the material allegations of paragraphs 21 through 28 of said Petition are within the personal knowledge of deponent.

2. That the Petitioner is a corporation created under and by virtue of the laws of the State of Delaware, and that the matters stated in paragraphs 1 through 20 and 29 through 37 of the Petition are believed to be true. Deponent further says that the grounds of his belief as to the matters stated in paragraphs 1 through 20 and 29 through 37 of the petition are derived from official court records, Petitioner's records, public records, conversations with Petitioner's employees and attorneys, stenographic transcripts of court proceedings, and statutory and case law of New York State and the United States. The reason why this verification of paragraphs 1 through 20 and 29 through 37 of the Petition is not made by the Petitioner is that the said Petitioner is a foreign corporation.

/s/ ROBERT C. BERNIUS

Robert C. Bernius

[Notarization Omitted in Printing]

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

[Exhibit "A" to Petition is omitted in printing, and appears at pages 11 through 18 of this Appendix]

Exhibit B-1

Henrietta
JUL 20 1976 3C

fisherman feared dead

State police yesterday were searching for two men in connection with the disappearance of a Henrietta man Friday night.

State Police in Canandaigua issued an alarm yesterday for Kyle E. Greathouse, age and address unknown, and another man.

State troopers said they believe William F. Clapp, 30 Garden Parkway, Henrietta, was shot while fishing with the two men on Seneca Lake Friday.

Police said Clapp was last seen Friday evening at Japp's Marina in Geneva when he left in his boat to go fishing with two men. The two men were later seen returning in the boat and driving away in Clapp's blue pickup truck, police said.

Police said an investigation turned up evidence that Clapp had been shot while on the boat. A team of six divers will continue looking for a body in the lake today.

Clapp, a former Brighton police man, had been working as a dispatcher for the Brighton Highway Department.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-2

Copter Searches Seneca Lake For Man Feared Murdered

JUL 20 1976 1C

A State Police helicopter was searching the northern portion of Seneca Lake today for a Henrietta man who is missing and feared murdered.

WAYNE CLAPP
. . . *1959 photo*

Wayne Clapp, 42, of 30 Garden Parkway, Henrietta, was reported missing yesterday after he failed to return from a boating trip on the lake.

State Police in Waterloo, Seneca County, said they are investigating the incident "under the belief that Clapp has been murdered."

State Police said they are seeking Kyle E. Greathouse and his wife, Mary Lee, both 16, and David R. Jones, 21. Addresses were not given.

Kyle Greathouse was identified as one of two companions who accompanied Clapp Friday on a fishing trip on the lake in Clapp's boat, Jaws.

Clapp has not been seen since the boat left the Roy Japp Marina, just south of Geneva on Route 14, police said.

Police said Greathouse and a companion were seen leaving the marina Friday evening in Clapp's blue pickup truck, described as a 1973 Ford with white top.

State Police said evidence found on the boat yesterday "indicated Clapp was shot while on the boat."

They have asked that anyone with information contact State Police at Waterloo or Canandaigua.

Clapp, a former Brighton policeman, was an employe of the Brighton Highway Department.

Questioned in Apparent Slaying

hold three in disappearance of Henrietta man

JUL 22 1976 TU

By MIKE SHORE

State Police detectives were in Michigan today to interview three suspects in an effort to learn the motive for the apparent slaying of a Henrietta man.

The suspects, a teenage couple and their 21-year-old companion, were arrested by Michigan authorities after a two-county search with helicopters and tracking dogs last night.

Two of them, Kyle Edwin Greathouse, 16, of San Antonio, Tex., and David R. Jones, 21, of South Carolina, were arrested on warrants charging them with the murder of Wayne E. Clapp, 42, of 30 Garden Parkway, Henrietta.

Clapp's body is believed to be somewhere in Seneca Lake and is being sought by State Police scuba divers.

The third suspect, Marilea Dienglewicz, 16, also of San Antonio, is wanted in connection with the theft of Clapp's pickup truck. Police said the woman has been using the name of Mrs. Greathouse.

A warrant charging her with grand larceny has been issued by authorities in Seneca County.

The three suspects were apprehended after a sheriff's deputy in Jackson County, Mich., made a routine license check yesterday afternoon while patrolling a small county park. (Jackson County is about 100 miles southwest of Detroit.)

State Police here had issued a nationwide pickup order for Clapp's truck.

Jones was arrested at the park and taken into custody.

A search was begun in the park for Greathouse and Miss Dienglewicz. Police used helicopters and dogs in the search. After three hours it was learned the couple might be in a motel in the next county.

The motel was surrounded and other residents evacuated, police said, but the two teenagers had escaped into nearby woods.

After more searching Miss Dienglewicz gave herself up and told police she would talk on a bullhorn to ask Greathouse to surrender, Jackson County Sheriff's detectives said.

Michigan authorities said Greathouse told them he was afraid he would be shot and sent the woman out first.

(Continued on 2B)

[Exhibit B-3 Continued on Next Page]

3 Questioned in Apparent Death

(Continued from 1B)

State Police here say they still are unsure of the motive for Clapp's murder. "We know he carried large sums of money with him," said senior investigator David Luitweiler. "There's a good possibility robbery might be involved.

Police theorize Clapp was shot with his own pistol partly because lakeshore residents reported hearing shots. Clapp's pistol is missing.

Luitweiler said Greathouse and Jones were seen leaving on a fishing trip with Clapp Friday night. He said the two returned on Clapp's 23-foot boat alone and drove off in Clapp's truck.

Police said they were hampered in their investigation because it wasn't until Monday that Clapp was reported missing by relatives. The murders had a 48-hour jump on us and we didn't know where they had gone, said Luitweiler.

San Antonio police said a missing person report had been filed on Miss Dienglewicz by her father on June 25. Members of her family declined to talk with a reporter except to say they thought she had married Greathouse and was traveling with him in the eastern part of the country.

Clapp's father, Morley, said he believes his son was murdered for money. "He got paid Wednesday and went down to the lake Thursday," Clapp said. "He might have been carrying $100 or $200 with him."

Clapp said his son frequently invited people to go fishing with him on his boat, nicknamed "Jaws." "He was outward-going and liked to give people a good time," Clapp said.

Clapp was born in Rochester and was graduated from Monroe High School. He served four years in the Air Force before joining the Brighton Police Department. He was a patrolman for 14 years before quitting to start work for the Brighton Town Highway Department.

Beside his father he is survived by his mother Marian; four brothers, Morley Jr. of San Diego, Gary of Brighton, Ralph of Rush and Warren of Livonia; and two sisters, Mrs. Marilyn Mapes of Henrietta and Mrs. Sharon Eichele of Rush.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-4

Michigan police hold 3 of Henrietta man in Seneca disappearance

JUL 22 1976 DC

By CHARLES WILSON
Regional News Service

Michigan police yesterday were holding two murder suspects and a girl teenager in the disappearance of a Henrietta man.

David R. Jones, 21, of South Carolina, wanted for second-degree murder in the disappearance of former Brighton police officer Wayne F. Clapp, was arrested about 3 p.m. in Spring Arbor Township, Mich.

Kyle Edwin Greathouse, 16, of San Antonio, Tex., and Marilea Dienglewicz, 16, also of San Antonio, were arrested shortly after 10 p.m. near Homer, Mich., about 25 miles west of Jackson.

Jackson County, Mich., Sheriff's Dept. Sgt. Michael Watkins said a deputy spotted a truck with New York State license plates while on routine patrol at Lime Lake County Park. A computer check revealed that Jones was wanted in New York State on murder charges.

The truck, which is registered to Clapp, was last seen near Geneva Friday.

Michigan state police and Jackson County deputies searched the area for five hours for Greathouse and Miss Dienglewicz.

Clapp, 42, was last seen leaving Roy's Marina south of Geneva on his boat, "Jaws," with Greathouse and Jones Friday afternoon, state police in Waterloo said. Witnesses saw the boat return in the evening without Clapp, state police said. Shortly after, Greathouse, Jones and Miss Dienglewicz were seen leaving together.

Warrants charging Greathouse and Jones with second-degree murder were issued Tuesday by Waterloo Town Justice Peter Bodine, who also named all three in warrants charging grand larceny in the theft of the truck.

Seneca County District Attorney Walter J. Ward said yesterday that he was notified Michigan officials he will seek extradition. ward said he feels he will be able to prosecute a homicide charge even if Clapp's body isn't found.

Ward said however, that evidence in the case is still developing and "the case could change."

State police yesterday continued a search of Seneca Lake, sending divers to depths of more than 100 feet, but did not find anything.

State Police have been investigating the case since early Monday. Police said evidence on Clapp's 25-foot boat indicated that he had been shot.

Waterloo Bureau of Criminal Investigation officers John Schermerhorn and John Eno were enroute to Michigan last night.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-5

Suspect (3) waives JUL 23 1976 DC extradition

By CHARLES WILSON

GENEVA — One of two persons charged with murder in the apparent slaying of Wayne F. Clapp has waived extradition proceedings in Michigan and will be transferred to New York to face charges "within a day or two," State Police said last night.

David R. Jones, 21, of Anderson, S.C., will be arraigned on a charge of second-degree murder as soon as he is brought from Jackson County, Mich., to Seneca County, Capt. Richard Boland said.

Jones and two San Antonio, Tex. teenagers were arrested in Michigan Wednesday after a deputy ran a routine check on a pickup truck they were in. The truck, which is registered to Clapp, had been the subject of a nationwide police alert issued by State Police in Geneva.

Jones and Kyle E. Greathouse, 16 of San Antonio, were arrested as fugitives from warrants issued here charging them with second-degree murder.

Their 16-year-old companion, Marilea Dienglewicz (also known as Marilea Greathouse) also is in custody in Michigan as a fugitive from a warrant charging her with second-degree grand larceny in connection with the theft of Clapp's truck.

State Police Detectives John Schermerhorn and John Eno from the Waterloo Substation are in Jackson County questioning the three suspects.

Clapp, 42, a former Brighton police officer, hasn't been seen since a week ago today when he went fishing on Seneca Lake in his boat "Jaws" with two persons, identified by witnesses as Jones and Greathouse.

When the boat returned to the marina, Clapp wasn't aboard, according to witnesses. State Police have been probing the case since Monday under the "assumption" that Clapp was murdered aboard the boat. Police said that assumption is based on evidence found in the boat after Clapp was reported missing Monday, and on witnesses' reports that shots were heard out on the lake Friday evening.

Turn to Page 2B

[Exhibit B-5 Continued on Next Page]

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

MURDER SUSPECT

Exhibit B-5

From Page 1B

Boland said State Police hope to make a decision this morning about how to bring the two 16-year-olds to New York to face charges, explaining that Michigan and New York officials are still researching how extradition statutes apply to the youths.

State Police said the 16-year-olds are regarded as juveniles in the state of Michigan, but as adults in New York State where the felony crimes allegedly were committed.

The case raises an apparently unique legal question, Boland said, and officials yesterday were researching the legalities with assistance from the Jackson County District Attorney's Office.

Police are hoping to bring back the three suspects at the same time, Boland said, but plans weren't made last night because the legal question was unresolved.

Seneca County Dist. Atty. Walter J. Ward said that information in the case may be presented to the Seneca County grand jury which convenes Aug. 2, but said at this point "the entire case is not put together."

Jones and Greathouse are named in second-degree grand larceny warrants as well as the warrants charging them with murder.

If Seneca County has to initiate extradition proceedings for the two 16-year-olds, Boland said, the process would have to involve the governors of both Michigan and New York. Ward said the proceedings could be lengthy.

Jones is now being held in Jackson County Jail and the two 16-year-olds are being held in a juvenile home in that county, about 100 miles southwest of Detroit.

In addition to the Michigan investigation, Boland said authorities here are still trying to contact possible witnesses to events of last Friday from both Ontario and Seneca counties. Seneca Lake is in Seneca County jurisdiction, but Clapp was last seen leaving Roy's Marina on Route 14, just south of Geneva in Ontario County.

Yesterday, State Police used sounding instruments in the Clark's Point area of Seneca Lake in an effort to find Clapp's body. Sear by helicopter and scuba divers since Mon have failed to turn up any evidence in the c

Little is known about the three suspects b held in the case, although they stayed at Mau Lakeview Tavern — Inn across the road f Roy's Marina nearly three weeks before Henrietta man disappeared.

Annette Mauro, who owns and operates inn with her husband, said the three arri together here in early July. "They just said t liked the area," Mrs. Maura said, adding "T weren't really bad kids — they were very q and we hardly ever knew they were around."

Mrs. Mauro said the three told her they "w going to stay for a while" and planned to f employment in the area, but that during th stay they spent most of their time in their ro watching television or sitting outside. "They h no car, where else could they go?" she adde

Mrs. Mauro said the 16-year-old g apparently has an aunt living in the area v originally brought the three to the inn.

State Police said Greathouse was on probat in San Antonio, but officers didn't know details of his criminal record.

State police hope to bring the pickup tru back to New York State for further investigati Clapp's boat is already in police possession, h Michigan officials are still looking for 357-magnum revolver, which is registered Clapp, and reportedly is missing.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-6

Police return
JUL 24 1976 DC (3)
suspects, gu

SUSPECTS

From Page 1B

By CHARLES WILSON

GENEVA — A gun belonging to Waterloo man of Henrietta is being returned to Geneva from Michigan today along with three young persons, two of whom have been charged with murdering Clapp.

Officers from the Waterloo and Canandaigua State Police substations were enroute to Jackson County, Michigan, yesterday and will bring the two murder suspects and their female companion to Seneca County today, Troop E Capt. Richard Boland said.

David R. Jones, 21, of Anderson, S.C., and Kelly D. Greathouse, 16, of San Antonio, Tex., will be arraigned in Waterloo on charged of second-degree murder and grand larceny after their anticipated arrival in Seneca County this evening, Boland said.

Maritea Dienglewicz, 16, also of San Antonio, will be arraigned on a second-degree grand larceny charge in connection with the theft of Clapp's truck, Boland said.

Clapp, 42, a former Brighton police

Turn to Page 2B

ouse took them to a spot where he had buried it near Homer, Mich., before his arrest Wednesday night.

Officer had previously found some ammunition at a motel near Homer, where Greathouse and Ms. Dienglewicz are believed to have stayed before their arrest in a nearby wooded area.

State Police have spent most of this week searching Seneca Lake for Clapp's body, using helicopters, scuba divers, and special television equipment from the U.S. Navy.

The three suspects had been staying at Mauro's Lakeview Tavern-Inn about three weeks before Clapp's disappearance. Clapp had come to Geneva July 15 to do some fishing in his boat which he kept at Roy's Marina on Route 14 south of Geneva, across the road from the Inn.

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Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-7

Suspect in Clapp Case Being Returned

One of two murder suspects wanted for the apparent slaying of a Henrietta man has waived extradition and is expected to leave Jackson, Mich., for New York today.

David R. Jones, 21, of Anderson, S.C., will be arraigned in Seneca County on a charge of second-degree murder, State Police said.

Jones and Kyle E. Greathouse, 16, of San Antonio, Tex., are accused of murdering Wayne H. Clapp, 42, of 30 Garden Parkway, Henrietta, a week ago and dumping the body into Seneca Lake. Clapp is a former Brighton policeman.

JUL 23 1976

The two suspects and Marilea Dienglewicz, 16, who goes by the name of Mrs. Greathouse, were arrested in Michigan Wednesday night after Clapp's stolen pickup truck was found in a park.

Capt. Richard E. Boland, head of State Police detectives in Canandaigua, said there is a technical problem in extraditing the two teenagers. He said that under Michigan law they are considered juveniles but in New York they are considered adults

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-8

2 charged as slayers of Clapp

JUL 25 1976 DC

By CHARLES WILSON

WATERLOO — Two young men were arraigned on second-degree murder charges here last night in connection with the disappearance of Henrietta resident Wayne Clapp.

David R. Jones, 21, of Anderson, S.C. and Kyle E. Greathouse, 16, of San Antonio, Texas, were committed to the Seneca County jail without bail following the 9:30 p.m. arraignment before Waterloo Town Justice Peter Bodine.

The two murder suspects also were arraigned on second degree grand larceny charges along with Marilea Dienglewicz, 16, San Antonio, Texas. She also was committed to Seneca County Jail following the court session.

The three suspects were brought by State Police from Michigan to Seneca County by car yesterday, and arrived at the Waterloo State Police barracks about 7:30 p.m. Fingerprinting and other processing at the State Police substation took an hour and a half. They then were taken to Bodine's office on Main Street for the arraignment.

The three suspects appeared calm during the court session, answering "yes sir" and "no sir" to Bodine's questions as he explained the charges. Seneca County Public Defender Stuart Miller was assigned as counsel for all three. The court proceeding then was adjourned to give the defendants time to obtain their own attorneys.

The three were captured in southern Michigan Wednesday, five days after Clapp, a 42-year-old former Brighton

Turn to Page 2B

CLAPP

From Page 1B

police officer, was last seen leaving Roy's Marina on Seneca Lake south of Geneva to go fishing on his boat.

The grand larceny charge was in connection with the alleged theft of Clapp's truck July 16, the same day as the alleged murder.

Earlier in the evening, Seneca County Dist. Atty. Walter J. Ward said that evidence in the case probably would go to the grand jury which convenes Aug. 2

The charge, as read by Bodine, alleges that the two young men murdered Clapp on Clapp's boat about 7:45 p.m. Police accuse them of shooting Clapp and throwing his body in the lake, then returning in the boat, "Jaws," to Roy's Marina.

Bodine read depositions signed by three witnesses in the case, one of whom said he heard "a series of five or six shots" from the lake saw Clapp's boat veer sharply south.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-9

3 indicted in slaying, theft case

AUG 5 1976 DC

By CAROL RITTER

WATERLOO — While divers yesterday continued to search Seneca Lake for the body of the alleged murder victim, three persons were indicted on a total of 20 counts of murder and other charges.

A Seneca County grand jury returned the indictments against David R. Jones, 21, of Anderson, S.C., Kyle Edwin Greathouse, 16, of San Antonio, Tex., and Marilea Dienglewicz, also 16, of San Antonio.

They were indicted in connection with the July 16 disappearance of Wayne Clapp, 42, of Henrietta.

Clapp, a former Brighton police officer, was reported missing July 19 after he failed to return from a fishing trip to Seneca Lake the previous Friday, July 16.

A manhunt ended in the arrest of the three suspects, who were charged with shooting Clapp with his own gun and throwing his weighted body into the lake.

The indictments accuse Greathouse of five counts of second-degre murder, a Class A felony, claiming he shot Clapp with one or more shots from a .357 magnum Python revolver and attached one or more boat anchors to the body before throwing it into the lake.

Greathouse was also charged with one count of first-degree robbery, a Class B felony, in the theft of a credit card from Clapp while armed with Clapp's gun; three counts of third-degree grand larceny in the theft of Clapp's revolver and keys to his 1973 Ford pickup truck; one count of second-degree grand larceny in the theft of the truck and one count of second-degree criminal possession of a weapon, Clapp's gun.

Jones was charged with three counts of second-degree murder, one of first-degree robbery, three of third-degree grand larceny and one of second-degree grand larceny. He, too, is charged with using anchors to weight Clapp's body, stealing the credit card while armed with the gun and stealing the gun, the keys and the truck.

Marilea Dienglewicz, who also uses the last name of Greathouse, was indicted on one count of second-degree grand larceny in connection with the theft of the truck.

Seneca County Dist. Atty. Walter J. Ward said last night the trio will be arraigned on the indictments at 2 p.m. Thursday in County Court. They are all being held without bail in Seneca

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-10

Seneca jury indicts 3 in slaying case

By CAROL RITTER

WATERLOO — While divers yesterday continued to search Seneca Lake for the body of the alleged murder victim, three persons were indicted on a total of 20 counts of murder and other charges.

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Greathouse was also charged with one count of first-degree robbery, a Class B felony, in the theft of a credit card from Clapp while armed with Clapp's gun; three counts of third-degree grand larceny in the theft of Clapp's revolver and keys to his 1973 Ford pickup truck; one count of second-degree grand larceny in the theft of the truck and one count of second-degree criminal possession of a weapon, Clapp's gun.

Jones was charged with three counts of second-degree murder, one of first-degree robbery, three of third-degree grand larceny and one of second-degree grand larceny. He, too, is charged with using anchors to weight Clapp's body, stealing the credit card while armed with the gun and stealing the gun, the keys and the truck.

Marilea Dienglewicz, who also uses the last name of Greathouse, was indicted on one count of second-degree grand larceny in connection with the theft of the truck.

Seneca County Dist. Atty. Walter J. Ward said last night the trio will be arraigned on the indictments at 2 p.m. Thursday in County Court. They are all being held without bail in Seneca County Jail.

If the case goes to trial without the body of the alleged victim being found, it will be the first such trial in New York State history, Ward said.

He said he has thoroughly researched the history of murder trials in the state, aided by experts in the Monroe County District Attorney's office and a state agency. No case similar to that pending here has been found in any records, he said.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-11

Memorial service for Clapp is today

The family of Wayne F. Clapp, of Henrietta, a former Brighton policeman believed to have been murdered July 19 at Seneca Lake, is holding a memorial service today.

The service will be at 7 p.m. at the Good Shepherd Church, 3264 East Henrietta Road.

Clapp, 42, of 30 Garden Parkway in Henrietta, is believed by state police to have been murdered while on a fishing trip on Seneca Lake. His body, however, has not yet been found.

David Jones, 21 of South Carolina, and Kyle E. Greathouse, 16, of San Antonio, Tex., were arrested in Michigan July 21 and charged with second degree murder in connection with Clapp's disappearance.

AUG 3 1976 DC

Exhibit B-12

Memorial Rite Slated For Wayne F. Clapp

A memorial service for Wayne F. Clapp of Henrietta, a former Brighton policeman who police believe was murdered and dropped into Seneca Lake, was scheduled for 7 p.m today by his family at Good Shepherd Church, 3264 East Henrietta Rd., Henrietta

Meanwhile, a Seneca County grand jury yesterday returned indictments charging three persons with murder in connection with Clapp's disappearance.

Indicted were David R. Jones, 21, of Anderson, S.C., and Edwin Greathouse, 16, and Marlea Dienglewicz, 16, both of San Antonio, Tex.

Clapp was reported missing July 19 after he failed to return from a fishing trip to Seneca Lake July 16. Divers yesterday continued a search for his body in the lake.

AUG 3 1976 TU

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-13

2 murder case suspects deny guilt in Seneca

AUG 6 1976 DC

By CAROL RITTER

WATERLOO — Kyle Edwin Greathouse and David Ray Jones pleaded innocent yesterday to a total of 19 counts of murder and other charges at their arraignment before Seneca County Judge Daniel De Pasquale here.

"Not guilty, your honor," the 16-year-old Greathouse answered after De Pasquale listed the 11 counts in the lengthy indictment against him — five of second-degree murder, four of grand larceny and one each of robbery and criminal possession of a weapon.

Jones, 21, gave the same response after the judge read the charges in the eight-count indictment against him — three of murder, four of grand larceny and one of robbery.

Jones and Greathouse are accused of killing Wayne V. Clapp, 42, of Henrietta, a former Brighton police officer, on his boat, "Jaws" on Seneca Lake July 16, and dumping the body in the water. Jones is from Anderson, S.C., and Greathouse is from San Antonio, Tex.

Also arraigned yesterday afternoon in the Seneca County Courthouse was Marilea Dienglewicz Greathouse, also 16, of San Antonio, on a single-count indictment charging her with grand larceny in the theft of Clapp's truck from near Roy's Marina south of Geneva on July 16.

She also pleaded innocent and was remanded to the Seneca County Jail without bail along with the two murder suspects.

De Pasquale granted attorneys' request for additional time to file motions in the cases of Jones and Greathouse, extending this period from 45 to 90 days. Seneca County Dist. Atty. Walter J. Ward, who is prosecuting the cases, said he didn't have any objection to such an extension.

Jones is being represented by Public Defender Stuart Miller of Seneca Falls, who requested the extension because of the "complexity of the case," the number of charges and other factors. Greathouse is being represented by Public Defender Thomas Jones of Seneca Falls, who cited the seriousness of the charges, "some novel circumstances" and other factors in his request for more time.

Attorney Jones assured the court that he would file motions in the case as soon as possible.

The 16-year-old San Antonio girl told De Pasquale yesterday that she preferred to be called Mrs. Greathouse rather than Miss Dienglewicz. She is being represetnted by a Seneca Falls lawyer, Calvin Brainard, who was given 45 days to file motions in her case.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-14

AUG 6 1975 DC

(2)

2 plead innocent to murder cha...

By CAROL RITTER

WATERLOO — Kyle Edwin Greathouse and David Ray Jones pleaded innocent yesterday to a total of 19 counts of murder and other charges at their arraignment before Seneca County Judge Daniel De Pasquale here.

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Attorney Jones assured the court that he would file motions in the case as soon as possible.

Greathouse is accused of shooting Clapp one or more times with Clapp's 357 magnum revolver, attaching boat anchors to the body before throwing it in the lake and with taking Clapp's revolver, truck keys and credit card. Jones is accused of using anchors to weight Clapp's body, stealing the credit card while armed with the gun, and taking Clapp's gun, keys and truck.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

Exhibit B-15

2 Plead Innocent

Of Killing Clapp

Kyle E. Greathouse and David R. Jones yesterday pleaded innocent in Seneca County Court in connection with the death of a former Brighton policeman.

Greathouse, 16, of Anderson, S.C. and Jones, 21, of San Antonio, Tex., gave the pleas to Seneca County Judge Daniel DePasquale in Waterloo. They are charged with killing Wayne V. Clapp, 42, of Henrietta, July 16.

Also pleading innocent was Marilea Dienglewicz, 16, of San Antonio, who is charged with grand larceny in connection with the theft of Clapp's truck.

AUG 6 1975

The men are accused of shooting Clapp on Seneca Lake and then dropping his body into the lake.

Exhibit B-16

THE TIMES-UNION Regional

Rochester, N.Y., Friday Evening, Nov. 5, 1976

Murder Defendants Appear in Seneca

By CAROL RITTER

WATERLOO — Proceedings in two pending murder cases were recorded in Seneca County Court yesterday.

A suppression hearing in the case of two youths charged in connection with the July 16 killing of Wayne Clapp, 42, of Henrietta, began yesterday and was to continue at 9 a.m. today.

Defendants Kyle E. Greathouse, 16, of San Antonio, Tex., and David R. Jones, 21, of Anderson, S.C., appeared in court with defense attorneys Thomas Jones and Stuart Miller.

Greathouse and Jones are charged with second-degree murder, first-degree robbery, second-and third-degree grand larceny.

Yesterday's hearing before County Judge Daniel De Pasquale was closed to the press and public when the judge granted a defense motion for a closed hearing. The judge explained that material to be discussed in testimony yesterday might be eventually declared inadmissible as evidence when the case goes to trial.

The defense also asked that witnesses during the supression hearing be kept out of the courtroom so one witness couldn't hear another's testimony. The motion was granted.

Clapp disappeared after he left his Henrietta home for a Seneca Lake fishing trip July 16. A search began three days later when he was reported missing.

The body has never been found, despite long efforts by State Police divers who searched the lake for several weeks after the disappearance.

In a murder case against Daniel Jones, De Pasquale placed the case on a 45-day motion calendar in preparation for trial after Jones pleaded innocent to charges of fatally shooting his mother and three sisters and setting the family home on fire.

Jones, 22, was arrested more than a year ago and charged in connection with the deaths of his mother, Gertrude, 41; and sisters Mary, 17, Theresa, 8, and Sandra, 7.

He was indicted on four counts of second-degree murder and one count of arson, but De Pasquale last fall declared him unable to stand trial

[Exhibit B-16 Continued on Next Page]

Exhibit B-16

after hearings at which three court-appointed psychiatrists testified.

Jones was committed to Mid-Hudson Psychiatric Center near Poughkeepsie for a period of up to a year.

Last Saturday he was returned to the Seneca County Jail and this week he has been observed there by his attorney, Thomas L. Jones.

Jones' lawyer, after conferring yesterday with Seneca County Dist. Atty. Walter J. Ward, waived further competency hearings for his client and stipulated that Daniel Jones could now stand trial. A report from Mid-Hudson recently indicates that Jones is able to undergo a trial now, the judge said.

Jones was arraigned yesterday and pleaded innocent to all counts. He was returned to jail and will remain there until further court action is taken.

Exhibit B-17

The Geneva Times Wed. 11/10/76

Judge reserves decision on show cause order

By BILL ALDEN

WATERLOO — Judge Daniel DePasquale reserved decision yesterday in Seneca County Court on a motion from District Attorney Walter J. Ward to dismiss a show cause order presented by Gannett Inc. (publishers of Democrat and Chronicle and Times Union). The order argued that the transcript of a Greathouse-Jones suppression hearing last Thursday should be made public.

Gannett was represented by lawyer Robert T. Bernius who said he was prepared to argue that the newpaper company suffered irreparable harm by not being able to report what was said at the pre-trial hearing involving Kyle E. Greathouse 16, of San Antonio, Texas, and David R. Jones, 21, of Anderson, S.C., who are accused of murdering Wayne V. Clapp in Seneca Lake last July.

Bernius cited two other cases involving the New York Times and the Gannett Newspaper Co. where the presiding judge ruled in favor of the press' rights to be present at a court hearing.

Ward, accompanied by public defenders Thomas Jones and Stuart Miller, who are representing Jones and Greathouse, asked the judge to dismiss the show cause order because the document was not served on the "office of the defendants" as required in the order. Bernius responded by saying that the requirement was in substance fulfilled when the document was served on the defendants attorneys Monday.

The district attorney and the attorneys for the accused spoke in fervent tones and appeared to be incensed during most of the proceedings which lasted about an hour [illegible]erday morning.

The county attorneys also argued that since Gannett was not a party in the Clapp murder case, its show cause order was incorrectly captioned "The People versus Kyle Greathouse and David Jones." Bernius said he was appearing as a friend of the court, and

[Exhibit B-17 Continued on Next Page]

Exhibit B-17

that favorable rulings in similar cases was sufficient reason for the judge to at least allow Gannett's arguments to be heard.

DePasquale said he tended to agree with the attorney and that this claim of the press' right to be present during all court proceedings would become more important in the future.

In contrast, Ward argued just as strongly that for the defendants' sake the judge was obliged to close the suppression hearing to protect their right to a fair trial.

The purpose of the hearing last Thursday was to determine whether certain evidence including statements, may be admissible as evidence in the defendant's pending trial. The defense motion for a closed hearing was granted on the basis that some of the material brought out in the hearing might be declared inadmissible in the trial.

Greathouse and Jones face counts of second degree murder, robbery and grand larceny in connection with the July disappearance of Clapp, a former Henrietta police officer. Clapp was reported missing July 19 when he did not return home from a fishing trip July 16 to Seneca Lake. Police allege Clapp was murdered and his body thrown into the lake. Several weeks' search of the lake failed to locate the body.

Greathouse and Jones pleaded innocent to the charges at their arraignments last August and are being held in the county jail.

Order to Show Cause and Petition
Dated November 18, 1976 with Exhibits

[Exhibit C to Petition is Omitted in Printing and appears at pages 4 through 6 of this Appendix]

[Exhibit D to Petition is Omitted in Printing and appears at page 7 of this Appendix]

[Exhibit E to Petition is Omitted in Printing and appears at page 8 of this Appendix]

[Exhibit F to Petition is Omitted in Printing and appears at page 42a of the Appendix to the Petition for a Writ of Certiorari.]

[Exhibit G to Petition is Omitted in Printing and appears at page 9 of this Appendix]

[Exhibit H to Petition is Omitted in Printing and appears at pages 13 through 18 of this Appendix]